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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Pay)
Telephone Reclassification)
and Compensation Provisions)
of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

To: The Commission)

**REPLY TO OPPOSITIONS AND COMMENTS IN RESPONSE
TO PETITIONS FOR RECONSIDERATION**

Mobile Telecommunication Technologies Corp. ("Mtel"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules, hereby submits its reply to the oppositions and comments filed by numerous parties^{1/} on January 7, 1998 in response to the petitions for reconsideration of the Commission's Second Report and Order (the "Second Report and Order")^{2/} submitted in the captioned proceeding.^{3/}

^{1/} See, e.g., comments and/or oppositions submitted by AirTouch Paging (AirTouch), Metrocall, Inc. (Metrocall), Consumer-Business Coalition for Fair Payphone-800 Fees (CBC), Ad Hoc Telecommunications Users Committee (Ad Hoc TUC), Telecommunications Resellers Association (TRA), AT&T Corp. (AT&T), MCI Telecommunications Corporation (MCI), Sprint Corporation (Sprint), Peoples Telephone Company, Inc. (Peoples), Communications Central Inc. (CCI), RBOC/GTE/SNET Payphone Coalition (RBOC Coalition)

^{2/} See, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Second Report and Order, FCC 97-371, ___ FCC Rcd ___ (1997), (rel. Oct. 9, 1997), 62 Fed Reg. 58659 (Oct. 30, 1997) ("Second Report and Order").

^{3/} Pursuant to Section 1.4(h) of the Commission's rules, this Reply is timely filed.

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I. OVERVIEW

For the reasons set forth below, Mtel urges the Commission to promptly issue a Notice of Proposed Rulemaking seeking comment on fundamental changes to the payphone compensation rules that are necessary so that they comply with Section 276 of the Act by providing "fair compensation" to payphone service providers ("PSPs") without imposing unnecessary and costly system modifications on interexchange carriers and users of toll free 800 numbers and dial around services. Specifically, the Commission should heed the advice of many petitioners and reevaluate the use of a calling party pays arrangement. During the pendency of the notice, the Commission should reconsider and revise its existing "carrier pays" compensation scheme. As it now stands in view of the Common Carrier Bureau's (the "Bureau") grant of a waiver of the PSP requirement to provide data sufficient to permit call blocking,^{4/} the Commission's carrier pays compensation scheme is internally inconsistent and arbitrary and capricious. Finally, should the Commission maintain its ill conceived "carrier pays" approach, the Commission must revise its compensation arrangements to reflect a measured rate that accounts for varying call lengths.

^{4/} Order, DA 97-2162 (Com. Car. Bur., rel. Oct. 7, 1997) (the "Waiver Order").

II. ARGUMENT

A. The Issue of "Calling Party" Pays Must Be Revisited

The petitions for reconsideration and the comments and oppositions filed in response thereto provide a substantial basis for disposing of the Commission's illogical and unworkable "carrier pays" compensation scheme and replacing it with to a justifiable "calling party pays" compensation mechanism.^{5/} Many of the commenters advocate a "calling party pays" mechanism, or at least drastic changes to the "carrier pays" approach now provided by the rules. See, e.g., Comments of AirTouch at 2-3 where AirTouch recommends that the Commission immediately issue a Notice of Proposed Rulemaking seeking comment on changes to the payphone compensation rules; see also, Comments of Sprint at 3, where Sprint encourages the Commission to promptly issue a further notice of proposed rulemaking, if such a notice is deemed to be necessary, opening the calling party pays issue to public comment. As Sprint explained, "requiring the person who chooses which phone to use for a call, i.e., the calling party to pay, up front, the compensation to PSPs in the only way to establish a meaningful market (if such a market can even exist)". Id. Mtel agrees with the many

^{5/} At the heart of the problem with any carrier pays scheme is the fact that a true "market" approach is simply not applicable where the caller cares not about the "market rate" that is borne by some other party. Unlike the local coin market in which calls are always initiated by the person responsible for payment of associated charges, in the coinless market, a toll free caller has no incentive whatsoever to seek a more affordable alternative.

petitioners who pointed to the problems inherent in any carrier-pays system, and for the need to re-visit a calling party pays in the immediate future.^{6/} When, as is the case here, there are changes in circumstances (here changes to the circumstances thought by the Commission to have existed), the Commission is required to revise its rules.^{7/}

B. The Commission's Inconsistent Treatment of Call Blocking is Arbitrary and Capricious

A fundamental premise for adopting a carrier pays compensation scheme was the (mis)understanding that the parties could negotiate an alternative to the Commission's "default" price, and thus drive the actual price paid to a true market level. See, Second Report and Order, at ¶. 97. From the outset, this premise was flawed. As other petitioners have explained, the possibility of blocking does not provide a significant counterbalance to PSPs market power. See, e.g., AT&T Comments, at 9. Moreover, because the payphone industry effectively consists of "locational monopolies", true

^{6/} The Ad Hoc TUC suggests the Commission adopt a modified carrier pays system that will both enhance the competitiveness of the payphone market and protect the public interest. Under such a system, callers would be notified when a toll free number is blocked and would have the option to override the blocked number by depositing a coin in the payphone. Comments of Ad Hoc TUC, at p. 5. While Mtel sees value in this proposal, relative to the current carrier pays arrangement, Mtel submits that this is not an adequate substitute for a true calling party pays arrangement.

^{7/} See Geller v. FCC, 610 F.2d 973, 979 (D.C. Cir. 1979). See, also, Allocation of Mobile-Satellite Service Spectrum at 2 GHz in ET Docket No. 95-18, where the Commission is considering a fundamental revisiting in the very near future of the entire MSS spectrum allocation proceeding for which the Commission has already decided the majority of issues.

market-based pricing is not attainable. It thus makes no sense to even strive to achieve that goal for this particular service. See, Comments of Ad Hoc TUC, at 3. Even if blocking could provide the market-based pricing that the Commission sought, it would do so only at a very heavy cost. As the D.C. Circuit recently recognized, "blocking is hardly an ideal option for the IXC's, for it is not only expensive to implement...but its use will invariably result in a mutual loss of business for both PSPs and the IXC's".^{8/} Moreover, the "blocking" solution is wholly at odds with the Bureau's recommendation that paging carriers employ "PIN code" 1-800 service rather than issuing individual 800 numbers to each customer. With PIN codes it is impossible to block and/or track payphone calls to individual paging customers, since they are sharing one phone number. See, Metrocall Comments at 9. In any event, the Bureau's grant of a waiver to PSPs effectively moots "blocking" as an option for as much as 40% of all payphone calls. Thus, the Commission's determination not to revise its rules to reflect the Bureau's Waiver Order is reversible error.

**C. The Commission's Failed to Properly
Consider the Length of 1-800 Calls
in Determining a Fair Compensation Rate**

Were it proper for the Commission to have established a carrier pays scheme for coinless calls, and it was not, the Commission's Second Report and Order still errs in that it fails to establish a rate that takes into account the straightforward, but

^{8/} Illinois Public Telecommunications Ass'n., at 566-67

critical, fact that payphone calls vary considerably in length, and that the charges associated with those calls should also vary. See, e.g., Mtel's Petition for Reconsideration at 6, where Mtel laid out this common sense proposition and pointed to earlier filed presentations to the same effect. See, also, Airtouch Comments, at 3.

Like all other calls, 1-800 calls vary in length from call to call. Paging calls last, on average, only ten percent as long as other calls.^{2/} Yet, the default rate established by the Commission does not take into account call duration in assessing the appropriate default compensation rate. As a result, called parties are made to pay the same charge for a very brief paging call as is necessary for a much longer communication.^{10/} This treatment is wholly at odds with the manner in which interexchange calls and the vast majority of lease arrangements, all of which involve some concept of a measured rate.^{11/} The Second Report and Order does

^{2/} See, ex-parte presentation by Paging Network, Inc. submitted September 22, 1997.

^{10/} This inequity can be illustrated easily. Assume that two persons place 1-800 calls from different payphones at the same airport. The first places a single five minute call, and the PSP is compensated 28.4 cents by the called party. The second person places a series of 1-800 paging calls during the same five minute span. The second PSP is compensated many times as much as the first one. Yet, both phones were "rented" for the same period of time.

^{11/} The situation is, of course, different for local payphone calls where there is no time limit on the length of a call that may be made for any given rate. Notably, however, in instances the calling party pays for the calls by inserting coins into the payphone.

not explain why this key distinction was not taken into consideration in assessing what is fair and equitable to PSPs.^{12/} The effect of this is to vastly inflate the "fair" compensation that paging carriers must pay.

Not unexpectedly, certain IXCs cautioned against basing PSP compensation on incremental usage based upon the argument that no carrier has an infrastructure in place that would allow it to track, calculate and pay to PSPs compensation based on call duration. See, Comments of AT&T, at 10 and Sprint, at 13. In support of its position, AT&T stated that the mere fact that a carrier bills its customers based on call duration does not demonstrate that it can also track and pay payphone compensation to other entities (i.e., PSPs) on the same basis. See, Comments of AT&T, at 10. While certain components of a measured rate infrastructure may not yet be in place--and it is difficult to understand how such infrastructure may be developed and implemented--the Commission can direct that such infrastructure be developed just as it directed the call blocking mechanisms to be developed. Moreover, such infrastructure costs should also be

^{12/} As such, it violates the recognized administrative law doctrine that, in order to avoid being arbitrary and capricious, the decision maker must consider properly all reasoned arguments that have been presented. See, e.g., Section 557(c) of the Administrative Procedure Act, 5 U.S.C. Section 557(c), which provides that all decisions shall contain findings, conclusions and reasons for all material issues of fact, law or discretion. See, also, Charles H. Koch, Jr., Administrative Law and Practice, 2nd Edition, Westlaw, Section 5.62.

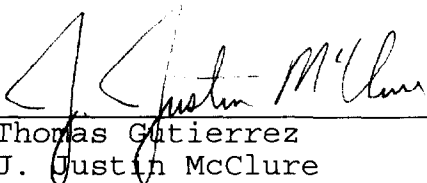
borne by the PSPs, as under the Commission's carrier pay's scheme they will be the beneficiaries of the use of payphones.

III. CONCLUSION

Common sense and fundamental fairness dictate that the Commission completely revisit its payphone compensation rules. The public deserves an opportunity to provide comment in this very important matter. Immediate review is particularly appropriate here because of the manifest injustice created by the Commission's inconsistent treatment of call blocking. Pending reassessment of the calling party pays concept, the Commission should revise its rules to take into account the industry's inability to block calls from approximately forty percent of all payphones. It should also substitute a measured rate payment arrangement for its current per call default charge.

Respectfully submitted,

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January 22, 1998

CERTIFICATE OF SERVICE

I, Jennifer McCord, a secretary in the law firm of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 22nd day of January, 1998, sent by first class U.S. mail copies of the foregoing "REPLY TO OPPOSITIONS AND COMMENTS IN RESPONSE TO PETITIONS FOR RECONSIDERATION" to the following:

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